

MEMORANDUM OF UNDERSTANDING

between

CITY OF SANTA CLARA

and

**CITY OF SANTA CLARA
EMPLOYEES' ASSOCIATION
UNITS 5, 7 & 8**



DECEMBER 18, 2005 – DECEMBER 13, 2008

MEMORANDUM OF UNDERSTANDING
between
CITY OF SANTA CLARA
and
CITY OF SANTA CLARA EMPLOYEES' ASSOCIATION
representing
MANAGEMENT AND CONFIDENTIAL, UNIT #5
CONSTRUCTION TECHNICIAN, UNIT #7
ADMINISTRATION AND CLERICAL, UNIT #8

DECEMBER 18, 2005 – DECEMBER 13, 2008

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MEMORANDUM OF UNDERSTANDING
between
CITY OF SANTA CLARA
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DECEMBER 18, 2005 – DECEMBER 13, 2008

In accordance with the provisions of Section 18 of the City of Santa Clara Employer-Employee Relations Resolution #2979, this Memorandum of Understanding was made and entered into this March 7, 2006, by and between the designated representatives of the City of Santa Clara (a public agency as defined in Section 3501 (c) of Chapter 10 of Division 4 of Title I of the Government Code of the State of California), hereinafter referred to as the City, and the designated representatives of the City of Santa Clara Employees' Association, representing Management and Confidential Unit #5, Construction Technician Unit #7, and Administration and Clerical Unit #8, (a recognized employee organization as defined in Section 3501 (b) of Chapter 10 of Division 4 of Title I of the Government Code of the State of California), hereinafter referred to as the Employees Association. This agreement constitutes the results of discussions between the City Management Staff and the Employees Association on all matters within the scope of representation. The term of this agreement shall be from December 18, 2005 through December 13, 2008.

WITNESSETH that:

WHEREAS the parties hereto desire to facilitate the peaceful adjustment of differences that may from time to time arise between them, to promote harmony and efficiency to the end that the City, Employees Association, and the general public may benefit therefrom, and to establish fair and equitable wages, hours and working conditions for certain hereinafter designated employees of the City,

NOW, therefore, the parties hereto do agree to propose and recommend that the City Council adopt the following, effective as indicated:

1. **TOTAL COMPENSATION**

A. For the purposes of this agreement, total compensation is defined to include the following items:

- 1) Salary
- 2) Fringe Benefits:
 - a. Retirement
(including Social Security)*
 - b. Holiday Pay*
 - c. Vacation Pay*
 - d. Insurance
 - (1) Life
 - (2) Health
 - (3) Dental

*These elements are directly tied to salary and move as a function of salary. No independent movement is allowed in these element areas.

- (4) Long-Term Disability
- (5) Vision Care
- e. Retiree Medical
- f. Other

- B. It will be the prerogative of the Employees' Association to allocate the distribution of total compensation monies among the following element areas: 1) Salary, 2) Life Insurance Premiums, 3) Medical Insurance Premiums, subject to the requirement that the amount of the Kaiser single health insurance premium, including the PEMHCA minimum, be included in the mandatory section of the total compensation array, and 4) Long-Term Disability Insurance, except as otherwise noted in this Memorandum of Understanding.

2. ADJUSTMENT OF TOTAL COMPENSATION

- A. Year 1 (12/05 – 12/06) Effective the pay period commencing December 18, 2005, for all classifications represented by the Employees' Association, the City shall adopt a monthly total compensation schedule for the benchmark classification of Combination Inspector that increases the total compensation of the benchmark classification by a total of 1.0%. The City will contribute outside of the salary adjustment form / total compensation schedule used by the City to determine the salary and other adjustments that will result from this total compensation increase: (1) fifty percent (50%) of the employer CalPERS retirement rate; and (2) the amount of the City's contribution to retiree health using the same methodology used in the City's total compensation survey (entitled, "Total Compensation Array"). The new salary adjustment form / total compensation schedule shall reflect the applicable City rates for CalPERS, PEMHCA, Social Security and Medicare.

Effective the beginning of the pay period which includes July 1, 2006, the salary adjustment form / total compensation schedule which was used to develop the December 2005 salary schedule for the Association will be adjusted to reflect the change in the City's CalPERS rate from the period of July 1, 2005 through June 30, 2006 to the period of July 1, 2006 through June 30, 2007. The City will contribute fifty percent (50%) of the employer CalPERS retirement rate outside of the salary adjustment form / total compensation schedule. The adjustment of the salary adjustment form / total compensation schedule will modify only the salary and CalPERS contribution elements of the schedule and the total compensation for the schedule will not change.

- B. Year 2 (12/06 – 12/07): Effective the pay period commencing December 17, 2006, for all classifications represented by the Employees' Association, the City shall adopt a monthly total compensation schedule for the benchmark classification of Combination Inspector that reflects the new employer CalPERS retirement rate applicable under the enhanced 2.7% at age 55 formula (see description in Section 3 of this MOU) and increases the total compensation of the benchmark classification of Combination Inspector by a total of 4.0%. The City will contribute outside of the salary adjustment form / total compensation schedule used by the City to determine the salary and

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other adjustments that will result from this total compensation increase: (1) fifty percent (50%) of the employer CalPERS retirement rate; and (2) the amount of the City's contribution to retiree health using the same methodology used in the City's total compensation survey (entitled, "Total Compensation Array"). The new salary adjustment form / total compensation schedule shall reflect the applicable City rates for CalPERS, PEMHCA, Social Security and Medicare.

Effective the beginning of the pay period which includes July 1, 2007, the salary adjustment form / total compensation schedule which was used to develop the December 2006 salary schedule for the Association will be adjusted to reflect the change in the City's CalPERS rate from the period of July 1, 2006 through June 30, 2007 to the period of July 1, 2007 through June 30, 2008. The City will contribute fifty percent (50%) of the employer CalPERS retirement rate outside of the salary adjustment form / total compensation schedule. The adjustment of the salary adjustment form / total compensation schedule will modify only the salary and CalPERS contribution elements of the schedule and the total compensation for the schedule will not change.

- C. Year 3 (12/07 – 12/08): Effective the pay period commencing December 16, 2007, for all classifications represented by the Employees' Association, the City shall adopt a monthly total compensation schedule for the benchmark classification of Combination Inspector that will increase the total compensation of the benchmark classification by 2.5%. The City will contribute outside of the salary adjustment form / total compensation schedule used by the City to determine the salary and other adjustments that will result from this total compensation increase: (1) fifty percent (50%) of the employer CalPERS retirement rate; and (2) the amount of the City's contribution to retiree health using the same methodology used in the City's total compensation survey (entitled, "Total Compensation Array"). The new salary adjustment form / total compensation schedule shall reflect the applicable City rates for CalPERS, PEMHCA, Social Security and Medicare.

Effective the beginning of the pay period which includes July 1, 2008, the salary adjustment form / total compensation schedule which was used to develop the December 2007 salary schedule for the Association will be adjusted to reflect the change in the City's CalPERS rate from the period of July 1, 2007 through June 30, 2008 to the period of July 1, 2008 through June 30, 2009. The City will contribute fifty percent (50%) of the employer CalPERS retirement rate outside of the salary adjustment form / total compensation schedule. The adjustment of the salary adjustment form / total compensation schedule will modify only the salary and CalPERS contribution elements of the schedule and the total compensation for the schedule will not change.

- D. **For the duration of this 2005-2008 MOU, the provisions specified below in this Section 2(D) are suspended.**

On or before September 1, 2000, and September 1, 2002, the City and/or the Association may present comparison data between Santa Clara and the cities

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of Mountain View, Palo Alto, Milpitas, San Jose and Sunnyvale for not more than 35 represented classes in 2000 and fifteen (15) represented classifications in 2002, and no more than 15 every second year thereafter, which the Association believes to be responsible for essentially the same work in the comparison jurisdictions for review by the Parties. The parties will meet to determine if they can agree on what classifications are comparable. If the City and the Association are in agreement that the classifications presented are appropriate for comparison, the City and the Association will determine if the total compensation after five years of service in the Santa Clara classification is more than 2.5% below the average of the classifications presented for review. If there are less than two appropriate comparisons among the jurisdictions listed, no adjustment will be made even though Santa Clara is more than 2.5% below the comparison jurisdiction. However, if there are less than two comparable classes available within the comparison jurisdictions, then either Party may present comparable information from at least two and up to five cities or special districts, including any benchmark agency, within Santa Clara, San Mateo and Alameda counties for consideration.

On or before January 1, 2001 and January 1, 2003 the parties will prepare a list of all Association represented classifications for which the parties have not completely agreed on all comparable classifications. This list shall state each party's determination of comparability, with explanatory data as deemed appropriate. This list shall be presented to Santa Clara County Employee Relations Service (ERS) for determination of comparability. ERS shall limit its determination of comparability to classifications submitted by either party. The determination by ERS shall include the reason(s) in writing for each individual determination. Nothing in this MOU precludes the parties from agreeing on one or more of the classification comparables before the determination by ERS.

Within 30 days of receiving the determination of comparability from ERS, if required, the City will determine if the total compensation after 5 years of service in the Santa Clara class is 2.5% or more below the average total compensation in the comparison jurisdictions. The City will place the Santa Clara class on the current salary range which will bring the total compensation for Santa Clara to equal or above the comparison average, effective the first pay period in 2001 and in 2003.

For purposes of this section of the MOU, total compensation for comparison agencies is defined as salary and fringe benefits which are paid by the agency to the employee or on the employees behalf and which are available to each employee in the classification specified in the survey that are recurring in nature after five years service in that classification as shown below. For the City of Santa Clara, total compensation shall be defined as those elements listed in Section I of this MOU.

- E. It is recognized by both parties to this agreement that it is their mutual responsibility to independently verify, to the extent possible, the accuracy of the information upon which total compensation adjustments are made. Should it be discovered by either party that adjustment(s) to salary and fringe

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benefits are based on erroneous information or has been erroneously computed, the necessary corrective action will be taken as soon as practical after the discovery and notice of the error has been given. It is the mutual responsibility of both parties to report any suspected error immediately upon discovery to the other party. However, the period for which there will be a right to recover any monies which are either overpaid by the City or underpaid to the employee shall be limited to an adjustment period of up to 90 calendar days from the date the error was first reported to the other party. The corrective action will be taken even in circumstances where the error may bridge successive MOU's, but the recovery will still be limited to amounts owed or owing during the prior 90 calendar days. The ninety (90) calendar day period will begin upon the date of written notification by personal service upon the other party.

Right of recovery by the City of overpayment shall be limited to recovery over the same time period as the overpayment was made. Said repayment will begin with the next paycheck following final determination of the amount to be repaid. Underpayment to the employee shall be made by the City in a lump sum of the amount owed on the next regular paycheck following final determination of the amount to be paid.

- F. There shall be no employee generated reclassification requests during the term of this MOU.

DEFINITIONS

- | | |
|---|--|
| 1. Top Step Salary - | Maximum step in the monthly salary range for classification (excluding seniority or longevity steps). |
| 2. Life, Medical, Dental, LTD and other Insurance - | Maximum agency monthly contribution per employee to insurance premiums as defined in Item 1 A 2 plus maximum agency monthly contribution to other fringe benefit insurance premiums. |
| 3. Retirement - | Maximum agency monthly contribution per employee, including employer paid employee contribution, to retirement and social security plans. |
| 4. Holiday Pay - | Number of paid holidays allowed by agency per year times daily salary rate of classification, divided by 12. |
| 5. Vacation Pay - | Maximum number of annual paid vacation days allowed by agency per employee upon completion of five (5) years service times daily salary rate for classification divided by 12. |

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- | | |
|-------------------------|--|
| 6. Other - | Monthly salary equivalent of or maximum monthly agency contribution to other fringe benefits available to all full-time agency employees. To be eligible for inclusion in comparison data, such benefits of the comparing jurisdiction must be of a recurring nature or become part of their compensation base |
| 7. Total Compensation - | The sum of Items 1 through 6 above. |
| 8. Daily Salary Rate - | Top step salary as defined in Item 1 above times 12 divided by total number of regular work hours per year times number of regular work hours per day |

TABULAR DESCRIPTION OF
ADJUSTMENT OF TOTAL COMPENSATION

For the duration of this 2005-2008 MOU, the provisions specified in this TABULAR DESCRIPTION OF ADJUSTMENT OF TOTAL COMPENSATION are suspended.

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|--|---|
| By September 1, 2000 & September 1, 2002 | Association presents total comparison information that shows essential equity in job duties among comparison survey jurisdictions for not more than 35 represented classes in 2000 and not more than 15 represented classifications in 2002. If City and Association are in agreement with comparison equity, City and Association will determine if the Santa Clara classification is 2.5% or more below the survey average for total compensation as provided for in Section 2.I. |
| First Pay Period of 2001 & 2003 | City implements salary increases on the City's "A" Salary Schedule for classifications determined to be 2.5% or more below the survey average in amounts necessary to bring those classifications to equal or above the total compensation survey average on the common salary schedule as provided for in Section IIG I. |

3. CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM (CALPERS)

- A. The City and represented employees have agreed to enhance their CalPERS retirement benefit from the current 2.0% at age 55 formula to the 2.7% at age

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55 formula effective December 17, 2006. The City and the Employees' Association shall cooperate to take all necessary actions required by law to effectuate this CalPERS retirement benefit enhancement effective on December 17, 2006. Under the enhanced 2.7% at age 55 formula, the City will continue to contribute fifty percent (50%) of the employer CalPERS retirement rate applicable under the enhanced 2.7% at age 55 formula outside of the salary adjustment form / total compensation schedule, in the same manner as the City did under the 2003-05 MOU.

The employee's CalPERS retirement contribution will continue to be treated as tax deferred.

- B. The employees and the City previously negotiated to implement the 2% at age 55 Retirement Formula benefit. At that time the parties negotiated an employer CalPERS allocation cost-share as described below. That cost-share provision is suspended as long as the City pays fifty percent (50%) or more of the employer CalPERS allocation. The previously negotiated cost-share is as follows:

The June 30, 1997 CalPERS Contract Amendment Cost Analysis-Valuation Basis (Analysis) shows that the increase in the Normal Cost due to the plan amendment is 1.503%. According to the Analysis, the Normal Cost for 2%@60 benefit is 4.168%, while the Normal Cost for the 2%@55 benefit will be 5.671%, for an increase of 1.503%.

The City and the Employees' Association agree that the City shall pay, of the increase to the normal cost, up to the first 0.75%, and the employees shall pay the remaining 0.753%.

The parties recognize that, according to the Analysis, the plan has excess assets, which are currently used to cover the Normal Cost and which will be used to cover the increased Normal Cost due to the plan amendment. The parties agree that, in the event and at such time as the City is required to make employer contributions to CalPERS to cover the Normal Cost, should the employer contribution rate increase above 4.168%, the City shall pay up to the first 0.75% and accordingly shall increase the employees' Total Compensation array, as set forth in Article I of the parties Memorandum of Understanding. At such time as the CalPERS rate reaches 4.918% (4.168% + 0.75%), the employees will be responsible for paying any additional increases in the CalPERS employer contribution rate out of the Total Compensation array.

Adjustment of the Total Compensation array shall reflect the actual CalPERS rates in effect for the current fiscal year and shall take place once a year on July 1st. The Normal Cost of 4.168% for the 2%@60 plan shall be considered a reference point since this rate will no longer be computed by CalPERS once the 2%@55 plan takes effect. All future computations shall be based on this reference point.

The parties recognize that the excess assets of the plan may cover the Normal Costs for several years, and that no employer contributions may

be required to cover the Normal Cost for that time period. The City and Employees' Association specifically agree that the parties' intent is to share the costs of this plan amendment, and that, at such time as the City is required by this agreement to pay the first 0.75% as described above, the City shall not offset the accompanying 0.75% increase in the employees' Total Compensation array, i.e., the City shall receive no credit for its contribution of 0.75% toward the Normal Cost for the 2% benefit in any future total compensation benchmarking survey or compensation setting process.

4. HEALTH/DENTAL INSURANCE PREMIUMS

A. Mandatory Health Allocation

Kaiser single employee health insurance will be included in the Total Compensation array as a Mandatory Allocation. The amount allocated for Kaiser single employee health insurance will be the premium minus the statutorily required Public Employees Medical and Hospital Care Act (PEMHCA) contribution. The PEMHCA contribution will remain in the Total Compensation array as a separate Mandatory Allocation. The City will change the dollar amount designated within the array for Kaiser single employee health insurance when the premium amount changes and/or when the statutorily required PEMHCA contribution changes.

B. Discretionary Health Allocation

The Association may (on a once-a-year basis, commencing with the beginning of the calendar year) designate within the discretionary portion of the total compensation array a fixed monthly sum for all represented employees for employee plus one or full family coverage. The Association's monthly allocation for health insurance premiums may be set to an amount not to exceed 10% above the lowest cost family health insurance coverage available. If the health insurance premium for an individual employee exceeds the amount allocated, the balance is paid by way of a salary deduction from the pay of the individual employee.

C. Discretionary Dental Allocation

The Association may (on a once-a-year basis, commencing with the beginning of the calendar year), designate within the discretionary portion of the total compensation array a fixed monthly sum for all represented employees for dental insurance premiums. If the dental insurance premium for an individual employee exceeds the amount allocated, the balance is paid by way of a salary deduction from the pay of the individual employee.

D. Health/Dental Allocation Refund

All individual employees having health and dental insurance payments made on his/her behalf that are less than the monthly amount allocated by the Association will have the difference refunded on a once-a-month basis. Such payments shall be made on the first paycheck issued in each month. For

health insurance, this refund program requires the following qualifications: 1) it must be a health insurance program; and 2) it must be a health insurance vendor with a current contract with the City through the CalPERS Health Insurance Program. City health insurance coverage will be at the option of the individual employee. It is the intent of this section that employees opting not to have City health coverage will be refunded the full amount allocated on their behalf for health insurance. Dental insurance premium refund will depend on whether or not the monthly amount allocated exceeds the individual employee's enrollment status.

- E. The City shall comply with the provisions of the Family and Medical Leave Act of 1993 (FMLA) and the California Family Rights Act of 1993 (CFRA).

5. DISABILITY INSURANCE

A. STATE DISABILITY INSURANCE

The City will continue to contract with the State of California Employee Development Department to provide Disability Insurance (SDI) for represented employees. All cost of SDI insurance is to be paid for as a payroll deduction by the individual employee.

B. LONG TERM DISABILITY

All represented employees will be enrolled in a mandatory long term disability insurance program as determined by the Association. This LTD plan will have a maximum 30 day waiting period and the maximum monthly benefit will include those offsets required by law such as, but not limited to, SDI, retirement, reduced work schedule, worker's compensation, social security, and Railroad retirement. The maximum monthly premium will be deducted from each employee's total compensation prior to taxes. Any unused portion of the premium will be refunded in the same manner as the medical insurance premiums.

6. SICK LEAVE/FAMILY SICK LEAVE/PERSONAL LEAVE

A. SICK LEAVE

- 1) Employees shall accrue ninety-six (96) hours of sick leave per year of regular City employment. Sick leave shall accrue in equal amounts each pay period. As described in the Personnel and Salary Resolution, employees must be in a paid status for 36 hours per bi-weekly pay period in order to accrue sick leave.
- 2) Use of sick leave will be under the same terms and conditions as are now in place. Personal leave, vacation and CTO may be used to supplement sick leave as available.

B. FAMILY SICK LEAVE

- 1) Not more than forty eight (48) hours of sick leave within one calendar year shall be granted to any employee for the care or attendance upon members of his/her immediate family, unless the use of additional leave is approved by the City Manager or designee. "Immediate family" is defined as spouse, parent, child, sibling, grandparent, grandchild, aunt, uncle, niece, nephew, first cousin, parent by marriage, step-parent, step-child, grandparent by marriage, son-in-law, daughter-in-law, sibling by marriage, foster parent, domestic partner, anyone residing with employee, or anyone dependent on the employee for care.

C. PERSONAL LEAVE

- 1) Each calendar year, an employee is entitled to use thirty-two (32) hours of accrued sick leave as Personal Leave, provided he/she has sufficient sick leave balance available.
- 2) Personal leave is intended to provide the employee with paid time off to attend to legitimate personal business that may arise from time to time during the year. Personal leave may be used to supplement sick leave as required.
- 3) The employee has an obligation to provide as much notice as possible so as to allow for proper scheduling by the department.
- 4) Providing that the minimal requirements of proper notification have been met, the use of Personal Leave should not be denied.

The adoption of this program does not modify the existing ability of the employee to exchange up to 96 hours of accrued sick leave for up to 48 hours of vacation, based upon two (2) hours of sick leave for one (1) hour of vacation as provided and defined in the Personnel and Salary Resolution.

7. BEREAVEMENT LEAVE

- A. The City will provide employees with a paid bereavement leave benefit to attend to the customary obligations arising from the death of a member of an employee's immediate family, as defined in this Section 6(B). Employees are eligible to receive up to forty (40) hours of bereavement leave in the event of the death of a parent (including step, adoptive and in-law), child (including step, adoptive and in-law), sibling (including step, adoptive and in-law), spouse or domestic partner; up to three (3) work days (regardless of shift assigned) of bereavement leave in the event of the death of a grandparent (including step, adoptive and in-law), grandchild (including step, adoptive and in-law), aunt (including step, adoptive and in-law) or uncle (including step, adoptive and in-law); and up to one (1) work day (regardless of shift assigned) of bereavement leave in the event of the death of their own or a step, adoptive, or in-law great-grandparent, great-grandchild, niece, nephew, or first cousin.

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- B. The bereavement leave benefit is based on each death occurrence and is not charged through the total compensation model.
- C. Up to five (5) work days of additional bereavement leave may be charged to an employee's sick leave balance with City Manager approval.
- D. At the request of the City, the employee will provide verification.

8. HOLIDAYS AND AWARDED CTO

A. Holidays

The City will observe the following thirteen (13) dates (or days) as City Holidays and City offices will be closed in observance of those holidays. Represented employees will be entitled to eight (8) hours of paid time off in observation for each of the holidays listed.

New Year's Day (January 1), Martin Luther King Day (3rd Monday in January), President's Day (3rd Monday in February), Spring Holiday (observed on Good Friday), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (1st Monday in September), Admission Day (September 9), Columbus Day (2nd Monday in October), Veteran's Day (November 11), Thanksgiving Day (4th Thursday in November), Friday after Thanksgiving, and Christmas Day (December 25). Holidays which fall on a specific date and which fall on Saturday are observed the preceding Friday. Holidays which fall on a specific date and which fall on Sunday are observed the following Monday.

January 1, July 4 and December 25 will be the actual paid holiday for represented employees who are assigned to departments which have 24-hour per day, 7-day per week operations and who customarily work on City Holidays.

B. Awarded Compensatory Time Off (CTO)

On January 1 the City will credit each represented employee with 16 hours of compensatory time off (CTO) (or the proportionate share if the employee is working a reduced work schedule). The 16-hour CTO accrual will be included in the total compensation calculation for the benchmark classification. This CTO shall be available for use by the employee under the same terms and conditions required by the department for use of regularly accrued CTO. Unused CTO may be traded for cash payout at any time after accrual.

Employees hired after January 1, 2004 shall be credited with a pro-rata share of the awarded CTO based upon the proportion of the calendar year remaining after their hire date.

9. VACATION ACCRUAL AND USAGE

Represented employees will be entitled to use vacation as it is earned under the following conditions:

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- A. Vacation may not be taken during the first 6 months of regular employment.
- B. Vacation will be earned on a bi-weekly basis (1/26 of the yearly accrual) provided that the employee is in a paid status for at least 2/3 of the hours (53.4 hours) of that pay period.
- C. Accrued vacation time will be paid off regardless of term of employment.
- D. Annual and maximum vacation accrual rates, calculated to four decimal points for accuracy, are as follows:

<u>COMPLETED YEARS OF SERVICE</u>	<u>ANNUAL ACCRUAL</u>	<u>MAXIMUM ACCRUAL</u>
1 through 4	80 hours	400 hours
5 through 9	120 hours	400 hours
10+ years	168 hours	400 hours

- E. The existing practice that requires an employee to cease accrual of vacation in any pay period during which his/her vacation balance exceeds the maximum accrual as shown in Section 9(D) is as follows:

Employees are limited to the maximum accrual of vacation as defined, based on years of service. Employees may temporarily exceed the allowed maximum vacation accrual, subject to the vacation balance as of the end of the pay period, which includes December 31 of each year being reduced to the maximum allowable accrual. The current vacation balance, the year-to-date accrual and the current pay period usage are all shown on the employees' pay check stub and are the responsibility of the employee to track for compliance with this provision.

Vacation that is temporarily allowed to exceed the maximum allowable accrual and is removed from the vacation balance as of the end of the pay period that included December 31 of each year may be donated to the Emergency Paid Leave Fund at the direction of the employee.

- F. Vacation may be used in one-tenth (1/10) hour increments.
- G. Employees who begin work prior to July 1 or continue to be employed after the first calendar year of employment are required to use at least one-half of the vacation accrued during the prior calendar year during the current calendar year.
- H. Subject to having a sufficient balance of accrued vacation available, an employee may, on a once per year basis, be paid at his/her current hourly pay rate for a maximum of forty (40) hours of accrued vacation if he/she has taken at least ½ of the vacation earned in the previous calendar year during the current calendar year.
- I. In lieu of receiving a vacation-leave cash payout at retirement, the Employees' Association may vote to roll accrued vacation leave hours into the employee's VEBA account, subject to Association compliance with

Federal rules associated with employee contributions of vacation leave to their VEBA accounts.

10. RETIREE MEDICAL

- A. Comparison of the percentage change in the average monthly total compensation for the benchmark position in the comparing agencies will include each agency's contribution toward retiree medical as an element of total compensation. The amount shall be the maximum agency monthly contribution per retiree times the number of retirees divided by the number of authorized employees.
- B. The provisions for the Association participation in the CalPERS Health Insurance program adopted by the Addendum to the Memorandum of Understanding between the City and the Association dated June 16, 1987 (attached) are incorporated into this MOU.

11. VOLUNTARY EMPLOYEE BENEFICIARY ASSOCIATION (VEBA)

The City established a Voluntary Employee Beneficiary Association (VEBA) trust under Internal Revenue Code Section 501(c)(9) for the purpose of providing a defined contribution post retirement medical benefit for employees. The City will no longer make contributions to employee VEBA accounts effective December 21, 2003. Employee VEBA accounts will remain open for other potential contributions. Specific information regarding the Plan is referenced in the Plan Document.

A VEBA is a tax-exempt trust account formed under Internal Revenue Code Section 501(c)(9) designed to accumulate assets to fund the future payment of qualified unreimbursed medical expenses (including specified insurance premiums). At retirement, participants may withdraw the accumulated plan benefits to pay for unreimbursed health insurance premiums, qualified long term care insurance premiums, and other qualified unreimbursed medical expenses and will not be taxed under non-medical purposes current state and federal law. Withdrawals cannot be made for non-medical purposes.

12. RETIREE MEDICAL REIMBURSEMENT BENEFIT

The Retiree Medical Reimbursement Benefit shall provide each employee who retires from the City with at least ten (10) years of regular City service with a reimbursement for unreimbursed single retiree health insurance premium beginning with the first full month of retirement from City service and ending with the last full month before the retiree's sixty-fifth (65th) birthday. Starting with the month in which the retiree turns age sixty-five (65), the reimbursement will be for unreimbursed Medicare single retiree supplemental health insurance premium. For premiums paid in calendar year 2005 that will be reimbursed in 2006, the City will reimburse an amount up to \$256 per month, including the PEMHCA minimum, for unreimbursed single retiree health insurance premium or up to \$154 per month, including the PEMHCA minimum, for unreimbursed Medicare single retiree supplemental health insurance premium. The amount of the City reimbursement will be adjusted thereafter once each year by the percentage

change from October to October in the San Francisco-Oakland-San Jose urban wage earners and clerical workers (W) consumer price index from the prior year, but in no event will be increased more than 3.5%.

Beginning in 2004, the City will pre-fund this benefit with an amount to be determined by an actuary.

Each retiree will be required to submit proof of health insurance coverage to the City each year. The City will pay the reimbursement in a lump sum payment once per year.

13. GROUP LONG TERM CARE

Beginning April 1, 2004, the Association has the option to participate in a Group Long Term Care Plan (insurance company and plan to be determined).

Participation will be voluntary on an individual enrollment basis. Employees electing the plan shall authorize a tax payroll deduction to the program plan provider on a monthly basis for the incurred premiums. The plan will have no cost impact on the City.

14. NIGHT DIFFERENTIAL PAY

A. Night time differential of 5% for each hour or portion thereof worked between the hours of 6:00 P.M. and 8:00 A.M. of the following day shall be paid those regular, full time employees working on regular shifts, provided that at least two (2) or more of the hours worked fall within the night time differential period.

1) For those employees whose regularly scheduled shift is not the traditional 8:00 A.M. to 5:00 P.M., night time differential of 5% for each hour or portion thereof worked between the hours of 5:00 P.M. and 7:00 A.M. of the following day shall be paid, provided that at least two (2) or more of the hours worked fall within the night time differential period.

B. Represented employees who work a minimum of a full shift between the hours of 4:00 P.M. and 8:00 A.M. will be paid 5% night time differential commencing at 4:00 P.M. whether or not the hours worked are consecutive. If the employee does not work the full shift, the previous eligibility will prevail.

1) Represented employees who work a minimum of a full shift between the hours of 3:00 P.M. and 7:00 A.M. will be paid 5% night time differential commencing at 3:00 P.M. whether or not the hours worked are consecutive. If the employee does not work the full shift, the previous eligibility will prevail.

C. Represented employees who work overtime between the hours of 6:00 P.M. and 8:00 A.M. will be paid 5% night time differential for all overtime hours worked, providing that two (2) or more hours fall within the night time differential period, and will cover all overtime hours worked from 4:00 P.M.

- 1) Represented employees who work overtime between the hours of 5:00 P.M. and 7:00 A.M. will be paid 5% night time differential for all overtime hours worked, providing that two (2) or more hours fall within the night time differential period, and will cover all overtime hours worked from 3:00 P.M.

15. OUT OF CLASS PAY

Represented employees assigned to work temporarily in a higher classification than their own shall be paid at least 5% more than their prevailing salary or at the entrance step of the range of the higher classification, whichever compensation pattern is greater.

- A. Such assignment will be paid for all actual time assigned to the higher classification, after a four (4) hour elimination period on the first day of said assignment.
- B. If the out-of-class assignment lasts more than four (4) hours, out-of-class pay will begin with the first hour of the assignment.
- C. For a continuing out-of-class assignment of less than four (4) hour increments that lasts more than four (4) hours, out-of-class pay will begin with the first hour of the assignment.

Any represented employee who is assigned to work out of class in an unclassified position will receive a 5% salary differential above his/her current salary or the salary established as 85% of Control Point for the unclassified position if such salary has been established, whichever compensation pattern is greater, provided that the requirements of (A), (B), and (C) above are satisfied.

To be eligible for out-of-class pay, the employee must perform all duties as assigned within the higher classification and must be assigned in writing.

16. PREFERRED CTO/STRESS REDUCTION PROGRAM

- A. For all represented employees the following steps will take place as a Stress Reduction Program:
 - 1) Once each calendar quarter each represented employee may designate eight (8) hours of accrued Compensatory Time Off (CTO) as Preferred CTO to be taken in that calendar quarter.
 - 2) If the employee does not exercise his/her option to designate and use eight (8) hours of preferred CTO in a calendar quarter, the option does not carry over into a subsequent calendar quarter.
 - 3) The City will not unreasonably deny the use of such CTO provided that the employee has given at least 24-hour notice of the request to use that Preferred CTO. Denial of said request will be on the basis of the inability of the department to provide required services if such request were to be granted, except that the City may assign employees to work overtime to

cover one employee's request. The City may, at its sole option, grant Preferred CTO use with less than 24-hour notice. Employees may not be called back from Preferred CTO for other than emergency conditions that cannot be covered with the use of assigned overtime.

17. OVERTIME

- A. Represented employees assigned to work a 40 hour work week who work overtime are entitled to:
 - 1) Time and one half the employee's hourly rate for worked overtime excluding unpaid meal time for all hours worked beyond their regular daily or weekly work schedule.
 - 2) Double time for all hours worked in excess of 12 consecutive hours of actual work excluding unpaid meal time.
- B. Regular employees assigned to work less than a 40 hour week who work overtime are entitled to:
 - 1) Straight time for worked overtime excluding unpaid meal time that results in less than forty (40) hours paid time in a workweek.
 - 2) Time and one half the employee's hourly rate for worked overtime excluding unpaid meal time for all hours worked beyond the regular daily or weekly work schedule for that classification (usually 8 hour day and 40 hour week).
 - 3) Double time for all hours worked in excess of 12 consecutive hours of actual work excluding unpaid meal time.
- C. Represented employees who are assigned to provide staff support to established City boards and commissions are to be paid at the following rates for hours worked in a 24 hour period from 8:00 A.M. to 7:59 A.M. the following day:
 - 1) Time and one half the employee's hourly rate for the first four hours of overtime worked, excluding unpaid meal time.
 - 2) Double time for all hours worked in excess of 4 actual hours of overtime worked, excluding unpaid meal time. Normally this will be after 12 hours of actual work except when an employee is working more than 8 hours as a regular shift.
- D. Compensation for overtime hours worked, either pay or CTO, shall be at the discretion of the employee as long as the employee's CTO balance is below the maximum accrual set by the department and outside circumstances do not dictate the City pay the employee. If an employee's department has not set a CTO maximum accrual, the maximum accrual shall be 240 hours. It is the City's intention to enforce the CTO maximum accrual limit that applies to each employee. Employees who have more than their permitted maximum

accrual may roll some or all of their CTO hours that exceed their maximum into their VEBA accounts. Roll-over into VEBA is subject to Association compliance with Federal rules associated with contributions of accrued time into a deferred medical expense account. Employees will be permitted to roll their excess CTO hours into their VEBA accounts on a one-time basis in May 2004.

- E. Represented employees shall not be called back from their lunch break to perform duties they would normally handle during their on-duty time. Should they be called back during their lunch break, they will be given an alternative time for their lunch break or be compensated for the call back time at the appropriate overtime rate.

This section is not intended to dilute the Department Head's right to modify an employee's work schedule with appropriate notice to avoid the overtime assignment.

18. INDUSTRIAL INJURY/CONTINUATION OF INSURANCE BENEFITS WHILE ON WORKERS' COMPENSATION

Workers authorized by the City's Workers' Compensation Administrator to undergo therapy or treatment due to an industrial injury, who are required to leave work, shall receive leave with pay, including reasonable travel time, providing the treatment falls within the normal working hours, is pre-scheduled and can not be scheduled during non-work hours.

The City will continue payment toward health, dental and life insurance coverage for the employee and dependents up to the maximum amount allocated under total compensation for an employee who is disabled from work because of a work related injury if the employee is no longer in a paid status sufficient to continue the coverage afforded under the terms of the program, subject to the following conditions:

- A. The employee may not increase the existing coverage after the date of injury except to add children born within nine months of the injury.
- B. Continuation toward payment of employee and dependent health/dental/life insurance coverage up to the maximum allocated under Total Compensation is limited to one (1) year from the date of injury. Continuation toward payment of employee health/dental/life insurance coverage up to the maximum allocated under Total Compensation may be extended if the employee continues to be on temporary disability status for a Workers' Compensation injury.
- C. The employee has supplemented his/her workers' compensation benefit with sick leave, vacation, CTO or other paid leave sufficient to qualify for payment of the health/dental/life insurance premium and is no longer entitled to any salary from the City.

19. FLEXTIME

The City will continue the practice of Flexible Work Schedules, as specified in City Manager's Directive #46.

20. RAINGEAR REIMBURSEMENT/UNIFORM ALLOWANCE

The City will reimburse the employees working in the classifications set forth in Appendix A to this MOU up to \$75 each calendar year for the purchase of a new raingear for work purposes. The employee must present the applicable Department Head with a receipt for a new raingear to qualify for the reimbursement.

During the term of this MOU, the parties will begin to meet and confer to discuss the subject of uniform allowance at least sixty (60) days before the City requires employees to begin wearing a uniform.

21. MILEAGE ALLOWANCE

Represented employees will be reimbursed for authorized use of a personal vehicle. The rate of reimbursement shall be the allowable standard deduction for mileage, which is permitted by the Internal Revenue Service in the filing of personal income tax returns.

This will exclude those employees guaranteed flat rate monthly mileage allowance.

22. AGENCY SHOP

- A. The City (Employer) agrees that the Employees' Association (E.A.) shall remain the sole and exclusive agent for all the employees covered by this agreement in Units 5, 7 and 8, without regard to membership in the Association, with respect to all matters relating to hours, rates, terms and conditions of employment and all other bargainable issues. The Employer further agrees that it will not recognize or negotiate with any other person, association, group, committee or entity other than the E.A. with respect to such matters and will deal solely through the agency of and with the E.A. herein.
- B. All employees who are members in good standing of the E.A. at the date of the signing of the contract and those employees who thereafter become members shall, as a condition of employment, remain members of the E.A. in good standing during the life of the agreement.
- C. All employees in Units 5, 7 and 8, other than current employees as of January 1, 1986, within thirty (30) days of the date of their initial employment or the signing of the contract, whichever is later, shall be required to make payment of a cash sum as periodic dues to the E.A., if such employee is a member thereof; or, an equivalent sum, if not a member, as a charge for the services rendered and to be rendered hereunder by the E.A. as the exclusive bargaining agent, for the duration of the agreement. Permanent employees

employed with the City as of December 31, 1985, have the option of joining the Association.

- D. In the event an employee neglects, fails or refuses to comply with the terms of Sections B or C above, the employer hereby agrees, upon the request of the E.A., to discontinue the employment of any such employee. The E.A. agrees to give a delinquent employee ten (10) days notice prior to seeking termination and the City is obliged to terminate for failure to pay sums due and owing.
- E. A dues check off or service fee check off provision will be made available by the Employer to any employee who voluntarily agrees and executes a written authorization to the Employer.
- F. An employee who has conscientious objections to joining or financially supporting public employee organizations shall not be required to join or financially support any public employee organization as a condition of employment. Such employee is required, in lieu of periodic dues and initiation fees, to pay Agency Shop Fees in sums equal to the Association's regular dues and initiation fees to a non-religious, non-labor charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, chosen by such employee and verified as being a qualifying organization by the Employees' Association.
- G. The agency shop provision shall be rescinded by a majority vote of all the employees in the bargaining group covered by such memorandum of understanding, provided that: (1) a request for such a vote is supported by a petition containing the signatures of at least thirty (30) percent of the employees in the bargaining group; (2) such vote is by secret ballot; (3) such vote may be taken at anytime during the term of such memorandum of understanding, but in no event shall there be more than one vote taken during such term.
- H. Any employee who claims financial inability to pay dues (or in lieu Agency Shop fees) may request a waiver of this requirement by filing a petition with the E.A. If the E.A. finds that hardship exists, either a temporary or permanent waiver may be approved.

DEFINITION: For purposes of this Section, Agency Fee is defined as that portion of dues not attributable to social or political activities.

23. EMERGENCY PAID LEAVE POOL

A. ADMINISTRATION

Administration of this program shall be provided by a three (3) member Emergency Paid Leave Board (Board) consisting of two (2) members of the Association Board and the City Director of Human Resources (or designee). Determination of eligibility to use the vacation established in this Emergency Paid Leave pool will be by majority vote of this board. An

adverse decision of this board may be appealed to the Association Board of Directors and their determination shall be final.

B. METHOD OF DONATION

- 1) Contribution of vacation or CTO will be computed at the member's base hourly rate of pay (excluding premium or specialty pay).
- 2) Contribution may be made from earned vacation, CTO or cash only. Conversion of Sick Leave to Vacation for purposes of donation to this pool will be immediately credited to the pool.
- 3) In a case where it has become known that an employee has been seriously injured or has a life-threatening illness and is in need of assistance from the Emergency Paid Leave Pool, contributions from accrued Sick Leave, bypassing vacation conversion, computed at the contributing employee's base hourly rate of pay (excluding premium or specialty pay) may be made for the benefit of that specific employee who has the need.
- 4) Employee may authorize the City to automatically convert vacation that should be accrued to the employee to the pool when the employee's vacation accrual has reached the maximum allowed.
- 5) Funds contributed to the Emergency Paid Leave Pool will be placed in an interest bearing Trust Fund. The Trust Fund will be accumulated in total dollars. No record of number of hours contributed to the Pool will be maintained. An employee making a donation to the Pool will not have a vested right to the amount donated. The Finance Department will report the status of the fund on a calendar quarter basis to the Association.
- 6) Employees may contribute earned vacation, CTO or cash to the Emergency Paid Leave Pools of other City bargaining groups.

C. USE OF POOL

- 1) Employee must have a verified emergency need for time off to request Emergency Paid Leave from the pool. Medical emergencies for the employee or dependent shall be verified by a doctor's certification and shall include the anticipated duration of the medical emergency. Non-medical emergencies shall be verified by certification acceptable to the Board and shall include the anticipated duration of the emergency.
- 2) Employee must have exhausted appropriate paid leave (sick leave including eligible conversion to vacation, vacation or CTO) prior to becoming eligible to request Emergency Paid Leave benefits from the pool. Employee will be notified by the Human Resources Department when they first become eligible to request emergency leave benefits from the pool.

- 3) The maximum time available from the pool (subject to the assets of the pool) will be 160 hours (two [2] pay periods) for Emergency Paid Leave benefits due to the illness or injury of the employee or the maximum allowable accrual of vacation for emergency needs of the family of the employee.
- 4) An additional 160 hours (two pay periods) will be made available in extreme circumstances if an employee has a medical emergency. The decision to grant or deny a request for an additional 160 hours will be made by a majority vote of the Employees' Association Board Members.
- 5) Emergency Paid Leave will be deducted from the pool based upon the employee's base hourly rate of pay (excluding premium or specialty pay).
- 6) Use of Emergency Paid Leave from the pool will be treated in the same manner as use of regular vacation. The employee will continue to accrue sick leave, vacation, insurance coverage and other benefits in the same manner as he/she would if using regularly credited vacation.
- 7) Emergency Paid Leave hours will be made available for use in the pay period following approval by the Association.
- 8) Emergency Paid Leave that has been credited to the employee and has not been used when the emergency has terminated will be reinstated to the pool. Vacation, sick leave and other benefits that have accrued to the employee will remain in the employee's account.

24. JURY DUTY

Represented employees required to report for jury duty shall be granted a leave of absence with pay from their assigned duties until released by the Court, provided the employee remits to the City all fees received from such duties and provided that the employee provides written proof from the Jury Commissioner for each day of jury duty which shows the time the employee has actually been present for assignment to jury duty. An employee who uses a private vehicle may keep any mileage fees. Employees who use City vehicles for travel to and from Court must remit jury and mileage fees to the City.

- A. Swing shift personnel shall have release time on the day of Court attendance. Time spent in Court, including time spent traveling to and from Court, shall be considered as time worked and shall be deducted from the regular shift.
- B. Graveyard shift personnel must be released from the shift prior to Court attendance. The time spent in Court, including time spent traveling to and from Court, shall be considered as time worked and shall be deducted from the regular shift. The balance of the shift will be offset by accrued vacation or CTO.
- C. For departments with minimum staffing requirements, employees who have been released from work for Court appearance shall take the balance of their shift off as CTO or vacation. For departments without minimum staffing

requirements, employees who are released from jury duty prior to the end of their regular shift shall have the option of requesting CTO or vacation for the remainder of their shift or of returning to work.

- D. Employees who normally work a schedule which includes Saturday and/or Sunday as a part of their regular work schedule who are called to jury duty, and who request reassignment of their normal work schedule because of the jury duty, will be assigned to a week-day (normally Monday through Friday) work schedule with their normal shift reporting times.

25. LIMITED/ALTERNATIVE DUTY

A. JOB RELATED ILLNESS OR INJURY

Employees who have a job related illness or injury which requires him/her to be off work under Workers' Compensation will be assigned to limited or alternative duty under the following condition:

Supervisors shall be advised of the medical condition of any industrial injury as soon as practical. Upon receipt of a Doctor's report which provides work limitations, the City may identify a regular or modified assignment for which the employee has the required experience and training to be eligible for assignment to. Such assignment may be based upon a 40 hour per week or less basis, if mutually agreed between the City and the employee.

Employees who have a job related illness or injury which requires him/her to be off work under Workers' Compensation or who do not qualify for limited or alternative duty will be reassigned to a Monday through Friday work schedule to keep required medical or other workers' compensation commitments.

B. NON JOB RELATED ILLNESS, INJURY OR CONDITION

Employees who have a non job related illness, injury or condition that requires him/her to be off work may request to be assigned to limited or alternative duty. Nothing in these provisions is intended to imply that an employee has a right to a limited/alternative duty assignment, unless expressly provided by law. Such request will be accommodated unless no appropriate limited or alternative duty assignment is available under the following conditions:

- 1) Identification by the City of a regular or modified assignment for which the employee has the essential experience and training to be eligible for assignment to. Such assignment may be based upon a 40 hour per week or less basis, if mutually agreed between the City and the employee.
- 2) Upon a written release from his/her doctor, subject to review by the City doctor, which allows the employee to perform all of the duties of the contemplated assignment.

- 3) Employees may account for his/her regular work schedule through a combination of limited or alternative duty hours and sick leave or other paid leave sufficient to maintain eligibility for regular accrual of benefits.
- C. Under both of these limited or alternative duty assignments employees will be required to work their regularly scheduled number of hours (normally forty (40) hours) per week, unless such assignment is modified by mutual agreement between the City and the employee. It is recognized that performance of limited or alternative duty assignments will not be permitted to interfere with any medically related treatment designed to assist the employee to return to full, unrestricted duty in the earliest possible time frame.

All such assignments, and their duration, are temporary assignments and are subject to periodic sixty (60) day review of the employee's continued need for limited or alternative duty, the employee's continued ability to perform the limited or alternative duty and the department's ability to continue the employee in the assignment. All temporary assignments shall be at the employee's regular rate of pay.

In the event the Americans With Disabilities Act requires modification of the provisions of this section, it is agreed that the law will prevail.

26. AFFIRMATIVE RESPONSE TO EMERGENCY OVERTIME

It is the policy of the City of Santa Clara to avoid the necessity for overtime work whenever possible. The City recognizes, however, the obligation to provide services to the community and, on occasion, may require employees to extend work shifts or to be called back to work due to emergencies, personnel shortages, or required workloads. Employees contacted for overtime work have an obligation to affirmatively respond to this need unless incapacitated or due to extenuating circumstances beyond the control of the employee and reasonably acceptable to the City. Failure on the employees part to affirmatively respond to such requests and/or to acceptably document such extenuating circumstances or incapacitation will be in violation of the City's rules and regulations and may be subject to formal disciplinary action. For purposes of this section, incapacitation commonly means that an employee is unable to respond to perform his/her duties because of his/her own sickness or injury, or because he/she does not feel capable of performing the duties of the assignment safely because of the ingestion of alcohol or other legal drugs or prescriptions. For purposes of this section, extenuating circumstances commonly means that an employee is unable to respond or perform his/her duties because of extraordinary circumstances such as being required to provide care for another person who is unable to care for him/herself, inability to obtain transportation to the work site, or an undue hardship that places the employee in a situation that he/she deems unsafe. In cases of extenuating circumstances, the employee is expected to notify his/her supervisor of the basis for the decision not to respond and a realistic time at which he/she will be able to report to work. Repeated instances where an employee is either incapacitated or has extenuating circumstances may be cause for the supervisor to review the situation and take appropriate corrective action.

27. LAY-OFF POLICY

- A. The need for reduction in force shall be determined by the City Manager as a result of the resource allocation plan adopted by City Council. The determination to reduce the work force shall contain reasons for reduction and a listing of programs that are affected, and the specific City classifications and numbers within each classification that shall be reduced.
- B. In the event the City demonstrates it is necessary to reduce the work force of represented employees, the City agrees to meet-and-consult with the Bargaining Group at least thirty (30) days prior to any layoff notifications to receive recommendations as to how best to accomplish this process with the least impact on represented employees, and to explore alternatives such as reductions in work hours, freezing of merit pay increases or similar programs which will result in reducing the City's labor costs.
- C. If the City implements a reduction in work force, the City will administer the lay-off policy consistent with the following concepts:

1) ORDER

The order of lay-off shall be as follows:

- a. Temporary (as-needed) employees.
- b. Probationary employees.
- c. Permanent employees in inverse order of seniority within the classification series being reduced.

2) SENIORITY

Seniority shall be determined by the length of current continuous, permanent service with the City regardless of classification in which employed. Continuous service shall be defined as that which has not been interrupted by separation of service from the City. Seniority shall be retained, but shall not accrue, during any period of authorized leave without pay (more than 5 days), except for military leave.

3) NOTICE

When the City determines that it must implement a reduction in work force, notice to the employee shall be in writing at least thirty (30) days prior to the effective date of the lay-off. The Bargaining Group shall also receive concurrent notification of lay-off. The notice of lay-off shall contain the following:

- a. Reason for lay-off
- b. Effective date of lay-off
- c. Opportunity to discuss with a representative of management
- d. Conditions governing re-employment
- e. Information regarding Unemployment insurance

4) REASSIGNMENT (BUMPING)

Employees identified for lay-off shall have reassignment rights (bumping) to the same classification in a different department or division based or to a previously held classification in which the employee attained permanent status based upon seniority as defined in Section B above. Employees must exercise these rights by notifying Personnel, in writing, within seven (7) calendar days after receiving written notification of the lay off.

D. In the event of lay-off, any employee so affected may elect to:

- 1) Accept a position in a lateral or lower class in which he/she has permanent status, or a position in a lateral or lower class within the series containing the class from which the employee is being laid off, provided he/she is otherwise qualified and is more senior than the least senior employee in such lateral or lower class.
- 2) Accept a position in higher class, provided he/she has held permanent status in such higher class, and further provided that the employee's transfer from the higher class was voluntary and occurred during his/her current period of employment and provided he/she is otherwise qualified and is more senior than the least senior employee in such higher class.
- 3) Accept a vacant position in a lateral or lower class for which he/she is otherwise qualified.
- 4) Any employee entitled to an option noted above, which involves assignment to a lower classification, may elect to be placed on lay-off in lieu of accepting such assignment to the lower class. In the event the employee elects to be placed on lay-off, such employee will only be recalled to the classification from which the employee elected to be placed on lay-off. The decision to not accept assignment to a lower classification may adversely affect the employee's ability to collect unemployment insurance.

E. SEVERANCE PAY

- 1) Represented employees who are terminated from their positions in the City of Santa Clara Electric Utility Department or from their positions in the City's Meter Reader classifications, as a result of a buyout, merger, or takeover of the electric utility during the term of this MOU, and are offered no other position within the City, shall receive severance pay as follows. Such terminated employee(s) shall be compensated at the rate of forty (40) hours [one week's pay] for each year of service as a City of Santa Clara employee, to a maximum of six hundred forty (640) hours [sixteen (16) weeks].

F. RE-EMPLOYMENT/REINSTATEMENT LISTS

- 1) The names of regular or probationary employees laid-off according to this policy will be placed on a Re-employment List for each classification for

which the employee is eligible in the inverse order of the lay-off. Individuals' names will be retained on a Re-employment List for classified positions for five (5) years from the effective date of lay-off. Employees whose names are on a Re-employment List for classified positions will be notified of other related openings for which testing is scheduled.

- 2) In the event an employee accepts reinstatement to a lower class than the one from which laid off, such person's name shall remain on the Re-employment List for reinstatement to the class from which laid off, lateral classes or other higher classes upon which his/her name appears provided such person, except for lack of seniority, would have been otherwise entitled to such lateral class at the time of the most recent lay-off. Individuals' names will be retained on a Re-employment List for classified positions for five (5) years from the effective date of lay-off. Employees whose names are on a Re-employment List for classified positions will be notified of other related openings for which testing is scheduled.

28. UNPAID TIME OFF

The Federal Family and Medical Leave Act and the California Family Rights Act shall prevail for any employee on personal or family medical leave.

Unpaid Time Off shall be granted under the following conditions:

- A. The City Manager shall be authorized to grant up to one (1) year leave of absence without pay for medical or personal reasons or personal development.
- B. Employees granted either such leave of absence will be returned to the same department and classification and the same salary range that would be in effect if they had not been on leave of absence, except that the leave time will not be included in length of service, upon resumption of their City employment.

29. PERMANENT PART-TIME EMPLOYEES' WORK HOURS

- A. Represented permanent, part-time employees shall have priority over as-needed employees to request assignment to work hours assigned to full-time or permanent part-time positions which are within the employees' classification and which become available in that given department or division, to a maximum of 40 hours per week. In giving consideration to granting the request for additional work hours, the department head will take into consideration the employee's ability to work the hours requested without impact on his/her own regular work schedule and the employee's ability to perform the full range of duties required in the assignment. The determination of the need to assign personnel to fill temporary work hours is reserved to the department head.

B. NOTIFICATION OF TRANSFER OPPORTUNITIES

Permanent, part-time or full-time employees seeking to increase, reduce, or maintain their work hours shall be given notification and the opportunity to request a transfer to any open position in the City within that classification. A permanent, part-time employee's request to transfer to another position within the same classification will be given the same consideration as any other transfer candidate for the vacant position. Transfer candidates will be evaluated, along with other qualified candidates, based on their ability to perform the full range of duties required in the assignment. The determination of the need to fill a vacant position is reserved to the City Manager.

30. STEP INCREASE EFFECTIVE DATE

The practice of awarding step increases the beginning of the pay period following the anniversary date of the employee is as follows:

- A. Employees who have an anniversary date that falls within the first week of the pay period and who have been approved for a step increase will be adjusted on the beginning day of the pay period during which the anniversary date falls.
- B. Employees who have an anniversary date that falls within the second week of the pay period and who have been approved for a step increase will be adjusted on the beginning day of the pay period immediately following the anniversary date.

31. REDUCED WORK WEEK/REDUCED PAY AND VOLUNTARY TIME OFF (VTO)

Employee participation in this plan is contingent upon the City's understanding and agreement that employee participation cannot be interpreted as anything other than a temporary and limited good faith effort being made by the employee to do his/her part to help ease the current budget crisis. This is not to be construed as a representation of employee commitment to a permanent program or an admission of any kind that the employee would not be harmed by such a plan becoming mandatory.

A. REDUCED WORK WEEK/REDUCED PAY

Employees may request a reduced work week schedule (32 hours per week instead of 40 hours per week, for example) at the same hourly rate of pay, subject to the following conditions:

- 1) With the approval of the Department Head and the City Manager, a binding work schedule as requested by the employee will be developed that may be modified only with the approval of both the City and the employee.

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- 2) More than a 20% reduction of the workweek in a pay period will result in proportionate reduction of accrual of sick leave and vacation.
- 3) No reduction of insurance premium payment or refund as long as sufficient hours are worked to allow for full payment of the premium for an employee working a full time work schedule. If the number of hours worked is less than the number required for full payment of premiums or refunds, the premium or refund payments will be reduced in proportion to the hours required to gain full credit.
- 4) Impact on retirement and other benefits will be determined by the application of actual work hours and rates of pay required under each of those programs.
- 5) Overtime hours will be paid at the straight time rate for hours worked which are less than the employee's regular daily work schedule or 40 hours per week. Overtime hours worked in excess of the employee's regular daily work schedule or more than 40 hours per week will be at the appropriate overtime rate.
- 6) Cancellation of the employee's participation in the program will be by mutual agreement of the employee and the Department Head, with the approval of the City Manager.

B. VOLUNTARY TIME OFF

Employees may request voluntary unpaid time off under the following conditions:

- 1) Approval of a work schedule that does not adversely impact the operations of the department or other employees in the work unit with the approval of the Department Head and the City Manager.
- 2) No impact on either sick leave or vacation accrual if sufficient hours are worked in a pay period to entitle the employee to his/her regular accrual rate for either benefit.
- 3) No reduction of insurance premium payment or refund as long as sufficient hours are worked to allow for full payment of the premium for an employee working a full time work schedule. If the number of hours worked is less than the number required for full payment of premiums or refunds, the premium or refund payments will be reduced in proportion to the hours required to gain full credit.
- 4) Voluntary time off may be taken without the employee first using all of his/her accrued Compensatory Time Off (CTO).
- 5) Employee may cancel his/her participation in the program with a notice time agreed upon at the time of the granting of the request that will be sufficient to allow the department head to accommodate the request.

- 6) Cancellation of the employee's participation in the program will be at the discretion of the Department Head with the approval of the City Manager.

32. ADA STATEMENT

The City shall comply with the Americans with Disabilities Act.

33. FOOTWEAR REIMBURSEMENT

Employees who are required to wear steel toed safety shoes (or boots) will be reimbursed an amount not to exceed \$185 each fiscal year (outside of total compensation) toward the purchase or repair of steel toed safety shoes (or boots). Employees who are required to wear steel toed safety shoes (or boots) are subject to disciplinary action if they do not have them available at the work site.

Meter readers are required to wear walking shoes while checking meters. The City will reimburse meter readers in an amount not to exceed \$85 each fiscal year (outside of total compensation) toward the purchase of walking shoes.

The City will continue the current policy to provide safety and/or protective equipment and/or clothing for use by the employee while performing his/her normal duties or during inclement weather or in other occasional special assignments or conditions.

34. REST PERIOD FOLLOWING EMERGENCY WORK

Any employee working eight (8) or more hours at the overtime rate during the fifteen (15) hour period immediately preceding the beginning of his/her regular work shift shall be entitled to a rest period of eight (8) consecutive hours on the completion of such overtime work with the following provisions:

- A. No employee shall be required to work in excess of sixteen (16) hours without rest unless an emergency is investigated and continued work is deemed necessary to prevent extreme property damage or to preserve human life.
- B. If the eight (8) hour rest period overlaps his/her regular work shift in whole or in part, he/she will be paid at the straight-time rate for the time that falls within his/her regular work shift.
- C. If the eight (8) hour rest period overlaps a portion of the first half of his/her work shift, the employee may be excused from work until the beginning of the second half of said shift. If the eight (8) hour rest period overlaps a portion of the second half of his/her work shift, he/she may be excused from work until the following work shift. He/she will be paid, however, for that portion of the rest period that overlaps his/her normal working shift. He/she will not be paid for the time between expiration of the rest period and his/her reporting for work.
- D. Hours worked prior to an eight (8) hour rest period shall not be included in determining another rest period.

- E. If the employee is called back to work during his/her eight (8) hour rest period, a new rest period will commence at the conclusion of such work.
- F. Any employee who works a minimum of three (3) hours of emergency overtime between the hours of 11:00 p.m. and 6:00 a.m. will receive an eight (8) hour rest period commencing at the time of release from duty.
- G. Notwithstanding the foregoing, if the employee is required to work during regular work hours on a work shift without having had a rest period of eight (8) hours, for which he/she has qualified as set forth above, he/she shall be paid at the overtime rate for all work performed until he/she has been released from duty for at least eight (8) hours.

35. ALTERNATE WORK SCHEDULE (NINE-EIGHTY SCHEDULE)

- A. An employee, subject to the conditions of the employee's job assignment, may propose an alternate work schedule as described in City Manager's Directive #71. Proposal must be made to the Department Head through the immediate supervisor. Consideration will be given as to the feasibility and impact on productivity of such proposal. Management retains the sole right to determine scheduling needs. A proposal for alternate work schedule, and the establishment or discontinuance of an alternate work schedule is not subject to any grievance procedure.
- B. Principles
 - 1) No increase in cost (for example, overtime, additional staffing).
 - 2) Does not necessitate acting or out-of-class pay assignments.
 - 3) Does not result in a lack of coordination of inter/intra departmental activities.
 - 4) Does not result in a reduction in level of service to the community.
 - 5) Does not result in holiday-in-lieu unless addressed in an existing employer/employee relations agreement. Holidays, vacation, sick leave and personal days will continue to be compensated at eight (8) hours.
 - 6) Does not result in increase in sick leave usage.
 - 7) Proposal for trial program needs to be submitted to the Department Head for approval.
 - 8) If approved by the Department Head, will be submitted to the City Manager for approval.
 - 9) If trial program approved for designated period of time, regular evaluation and monitoring will occur. Department Head and City Manager may terminate program at any time.

10) Flexible scheduling will not be grievable.

36. DOMESTIC PARTNERS

The City shall make all benefit programs available to employees, dependents and domestic partners, subject to the requirements of each benefit provider.

37. FLEXIBLE SPENDING PLAN, INTERNAL REVENUE CODE, SECTION 125

The City will make available a Flexible Spending Plan under the Internal Revenue Code Section 125 for employees. Employees may contribute pre-tax (federal, state, FICA, Medicare) dollars for dependent care and qualified unreimbursed medical expenses. This Plan will follow the regulations outlined by the Internal Revenue Code. Detailed information will be available in the Summary Plan Document.

The City will pay the administrative expenses for the plan. This Plan is voluntary and participating employees will pay the monthly participation cost. The monthly participation cost will be considered pre-tax, as defined above, under Internal Revenue Code Section 106. Participating employees will be provided with an Employee Plan Summary and regular statements regarding the status of their flexible spending accounts.

38. EMPLOYEE ASSISTANCE PROGRAM

The City agrees to provide a confidential Employee Assistance Program to be funded outside of Total Compensation.

39. NEGOTIATIONS PREPARATION

Members of the Employees' Associations negotiating team shall have the right to be released from work duties with pay for a reasonable amount of time in conjunction with and before or after Meet and Confer sessions with the City for the purpose of negotiations preparations.

40. NEXT MEMORANDUM OF UNDERSTANDING

The City and the Employees' Association will exchange their proposals for the subsequent Memorandum of Understanding not later than August 29, 2008.

41. EMPLOYEE RIGHTS

All rights, privileges and working conditions enjoyed by the classifications represented herein, as defined in Personnel and Salary Resolutions No. 4652, dated May, 1983, and City of Santa Clara Resolution No. 2979, entitled "Employer-Employee Relations" dated December, 1972, and other City resolutions, if any, dealing with employee rights and benefits shall not be reduced during the term of this Memorandum of Understanding except in accordance with the provisions of this Memorandum of Understanding.

For the duration of this Memorandum of Understanding, except as provided

herein, the wage and fringe benefits provided members of the Employees' Association shall not be reduced except by mutual agreement between the Management of the City of Santa Clara and representatives of the Association.

42. MANAGEMENT RIGHTS

Subject to State law and the provisions of City of Santa Clara Employer-Employee Relations Resolution, the rights of the City through its Council and Management include, but are not limited to: the exclusive right to determine the mission of its constituent departments, commissions and boards; set standards of service; determine the procedures and standards of selection for employment and promotion; establish and enforce dress and grooming standards; direct its employees; determine the methods and means to relieve its employees from duty because of lack of work or other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content and intent of job classifications; determine methods of financing; determine style and/or types of City-issued wearing apparel, equipment or technology to be used; determine and/or change the facilities, methods, technology, means, organizational structure and size and composition of the work force and allocate and assign work by which the City operations are to be conducted; determine and change the number of locations, relocations and types of operations, processes and materials to be used in carrying out all City functions including, but not limited to, the right to contract for or subcontract any work or operation of the City; to assign work to and schedule employees in accordance with requirements as determined by the City including but not limited to: establish and change work schedules and assignments upon reasonable notice; establish and modify productivity and performance programs and standards; discharge, suspend, demote, reprimand, withhold salary increases and benefits, or otherwise discipline employees for cause; establish and modify probationary periods and reasonable employee performance standards including, but not limited to, quality, and quantity standards; and to require compliance therewith; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work.

The City Council on its own behalf and on behalf of the City hereby retains and reserves unto itself all rights, power, authority, duty, responsibility and obligations conferred on and vested in it by the laws and Constitutions of the State of California and the United States of America. The exercise of such rights, power, authority, duty, responsibility and obligations by the City Council and the adoption of such rules, regulations, policies as are necessary and as they apply to employees represented by the Association shall be in accord with this Memorandum of Understanding to the extent that they do not violate any of the reserved duties, responsibilities and obligations conferred on and vested in it by the laws, Charter of the City, Constitutions of the State of California, and the United States of America.

43. SCOPE OF THIS MEMORANDUM OF UNDERSTANDING

The parties acknowledge that during the meetings which preceded this

Memorandum of Understanding, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Memorandum of Understanding. Therefore, for the life of this Memorandum of Understanding, the City and the Employees' Association voluntarily and unqualifiedly waive the rights and each agrees that the other shall not be obligated to meet and confer with respect to any subject or matter not referred to or covered in this Memorandum of Understanding, even though such subjects or matters may not have been within the knowledge or contemplation of either or both parties at the time they met and signed this Memorandum of Understanding.

Notwithstanding the foregoing, however, in the event any portion of this Memorandum of Understanding is declared null and void by superseding Federal, State or City law, the balance of this Memorandum of Understanding shall continue in full force and effect, and the parties shall immediately commence the meet and confer process to ensure that the superseded portions shall be rewritten to conform as nearly as possible to the original intent.

The City further reserves the right to consider required organizational and operational changes in the economical and efficient operation of the Departments whenever existing or future statutes bring about additional monetary costs.

Nothing in the foregoing shall prevent the parties to this agreement from meeting-and-conferring during the term of this Memorandum of Understanding in matters of mutual concern. Such meeting-and-conferring shall be established and continued by mutual consent only. If, after meeting-and-conferring between the management representatives and the majority employee representatives, no agreement has been reached, such items under discussion shall remain unchanged.

44. PERSONNEL AND SALARY RESOLUTION

The City and the Employees' Association agree that they will continue to meet and confer on proposed changes in the Personnel and Salary Resolution that affect wages, hours, and terms and conditions of employment, and meet and consult regarding all other proposed changes to the Resolution after the parties ratify and adopt this MOU.

MEMORANDUM OF UNDERSTANDING – UNITS # 5, 7 & 8 (2005 - 2008)

FOR THE CITY OF SANTA CLARA

(Eddie Kreisberg)

(Renée Runčis)

(Derick Yasuda)

(Tina Murphy)

(Fred Schulenburg)

(Julie Passalacqua)

FOR THE CITY OF SANTA CLARA
EMPLOYEES' ASSOCIATION

(Sharon Hoehn)

(Sandy Myers)

(Jim McGinley)

(Stephanie Gutowski)

(Jeff Ipsaro)

(Leslie S. Brown)

(Voula D. M. Brown)

APPROVED: (Jennifer Sparacino)
JENNIFER SPARACINO, City Manager

APPROVED BY THE CITY COUNCIL ON: March 7, 2006

ATTEST: (Rod Diridon Jr.)
RODNEY DIRIDON, JR., City Clerk

APPENDIX A

Assistant Sanitary Sewer Superintendent
Assistant Water Superintendent
Automotive Services Utility Worker
Automotive Foreman/Forewoman
Building Inspector
Code Enforcement Technician
Housing Inspector
Landscape Foreman/Forewoman
Meter Reader
Park Foreman/Forewoman
Public Works Inspector
Purchasing Utility Worker
Solid Waste Foreman/Forewoman
Senior Inspector
Utility Crew Supervisor
Utility Field Services Supervisor
Utility Field Services Worker
Water and Meter Service Supervisor